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Implementation of the United Nations Declaration against Corruption and Bribery in International Commercial Transactions

Report of the Secretary-General**

Addendum

1. An additional response to the survey instrument on the implementation of the United Nations Declaration against Corruption and Bribery in International Commercial Transactions was received from the United States of America, bringing the total number of responding States to 48. The information received from the United States is summarized below.

2. The United States reported that legislation to combat corruption and bribery in international commercial transactions was adopted in 1977 in the form of the Foreign Corrupt Practices Act.[1] Amendments to the Act were made in 1988 and 1998, in order to implement the Organisation for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the "OECD Convention"). The Act only applied to active bribery, while, under certain circumstances, foreign officials receiving bribes might be prosecuted under the Travel Act or the mail and wire fraud statutes.

3. With regard to the criminalization of bribery of foreign public officials, the United States reported that the Foreign Corrupt Practices Act made the bribery of foreign public officials by nationals, such as individuals, as well as private, public and national corporations, a criminal offence. Further, the Government noted that the bribery of foreign public officials, if committed by a natural person, was punishable with imprisonment of up to five years and a fine of up to US$ 100,000 while fines of up to US$ 2,000,000 were foreseen if the perpetrator was a legal person. Additional forms of civil and

* E/CN.15/2002/1 and Corr.1.

** The response from the United States of America to the survey instrument on the implementation of the United Nations Declaration against Corruption and Bribery in International Commercial Transactions, reflected in the present document, was submitted within the prescribed time. However, owing to an oversight by the Secretariat, it was not included in document E/CN.15/2002/6.

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administrative penalties that could be applied included the disbarment from contracting with the United States Government. In the period from 1996 to 1998, five prosecutions for bribery of public officials had been undertaken, all in the year 1998. There was no possibility under United States law to avoid prosecution for such an offence through legal transaction. In all five cases prosecuted in 1998, sentences had been pronounced: two cases had been sentenced with a fine (one with a fine of US$ 1,500,000), two with imprisonment and a fine (one case with over one year imprisonment) and one with another form of punishment (namely community service).

4. The United States reported that their Internal Revenue Code[2] included provisions to make it impossible for individuals to obtain tax benefits or deductions for payments outside the United States that would constitute bribes or other inappropriate payments to foreign public officials. Further provisions were also applicable to "indirect payments", which included payments that inured to the foreign official's benefit or promoted his interests, regardless of the medium in which the payment was made and regardless of the identity of the immediate recipient or payor. In addition, illegal bribes, kickbacks or other payments to public officials by "controlled foreign corporations" were included as income to the United States parent corporation.

5. The illicit enrichment by public officials or elected representatives was no offence under United States legislation, since that would represent the shifting of the burden of proof from government to a defendant, which was not possible under the United States Constitution.

6. With regard to corporate criminal liability, the United States reported that the Foreign Corrupt Practices Act provided for penalties against any corporation, partnership, association, joint stock company, business trust, unincorporated organization or sole proprietorship. In addition, it was noted that under established United States law, a corporation was liable for any crime committed by an officer, employee or agent that was within the scope of his or her duties and was, at least in part, for the benefit of the corporation.

7. The United States reported that it was unlawful under the Money Laundering Control Act[3] to engage in a financial transaction using the proceeds of a specified unlawful activity, such as a bribe of a foreign official, knowing that the money involved constituted the proceeds of some unlawful activity with the intent to promote the specified unlawful activity, to conceal the nature, location, source, ownership or control of the proceeds, to avoid financial transaction reporting requirements or to commit certain tax offences. It was also unlawful to transport, transmit or transfer such proceeds in international commerce.

8. The United States adopted accounting standards and practices that improved transparency of international commercial transactions within the Foreign Corrupt Practices Act in 1977. Those standards had been developed by a non-governmental organization, the Financial Accounting Standards Board, with input from the United States Securities and Exchange Commission. The United States Department of Commerce and other executive branch agencies, as well as private professional accounting and legal organizations, and the Department of Justice encouraged the development of corporate compliance programmes. For organizations with effective compliance programmes in place, the United States Sentencing Guidelines provided for a reduction in criminal fines.

9. With regard to requests for mutual legal assistance from other countries in connection with criminal investigations and other legal proceedings brought in respect of corruption and bribery in international commercial transactions, no statistics were kept on that specific category. However, it was reported that 29 requests for mutual legal assistance involving bribery and corruption had been received between 1997 and 1999. The same applied for requests from the United States to other countries. A total of 23 mutual legal assistance requests involving bribery and corruption had been made between 1997 and 1999, but no information existed as to how many had involved international commercial transactions.

10. With regard to requests received from other countries in connection with criminal investigations and other legal proceedings brought in respect of corruption and bribery in international commercial transactions, it was unlikely that any of the five requests involving bribery and corruption received between 1997 and 1999 had involved international commercial transactions. Regarding requests from the United States to other countries, it was reported that,

although there were no statistics on that specific issue, on a few occasions, the United States had sought extradition in bribery and corruption cases involving international commercial transactions.

11. The United States noted that, in addition to mutual legal assistance, law enforcement authorities could share certain kinds of information, including publicly available information, with foreign law enforcement agencies. No specific legislation had been adopted concerning law enforcement cooperation to combat corruption and bribery in international commercial transactions. However, the United States general mutual assistance statute,[4] which also applied to cases involving corruption and bribery in international commercial transactions, had been broadened in 1996 to ensure that assistance could be provided at the earliest stages of an investigation.

12. Because of the time lapse between the receipt of the responses to the survey and the preparations of the report on the implementation of the United Nations Declaration against Corruption and Bribery in International Commercial Transactions, the information on the status of adherence to the existing international legal instruments against corruption may have changed considerably. In that connection, the attention of the Commission on Crime Prevention and Criminal Justice is drawn to the report of the Secretary-General on existing legal international instruments, recommendations and other documents addressing corruption (E/CN.15/2001/3 and Corr.1), submitted to the Commission at its tenth session. In that document, it was stated that the United States had signed and ratified the Inter-American Convention against Corruption (E/1996/99, annex) and the OECD Convention (E/CN.15/2001/3 and Corr.1, paras. 29 and 32 and notes 11 and 14). In 1998, the United States adopted the International Anti-Bribery and Fair Competition Act, which amended the Foreign Corrupt Practices Act to implement the OECD Convention.

Notes

[1] 15 U.S.C. § § 78dd-1 ff.

[2] 26 U.S.C. § § 162 ff.

[3] 18 U.S.C. § 1956.

[4] 28 U.S.C. § 1782.